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Delegating Legislative Power over Corporations to Commissions.

The past few years have witnessed a marked tendency in this country to create commissions for the regulation of certain classes of corporations, especially those that may be called public-service companies. The most conspicuous instance of this kind is, probably, that of the public utilities commissions in the state of New York, which have been given very extensive powers. Grave fears were felt by many conservative people as to the effect of giving such great powers to commissions. But up to the present time the confidence of the people in these commissions seems to have continually increased. It is an extraordinary change in the relation of the public to the railroads and other great public-service corporations, when the people, instead of being always suppliants for any improvement in service or any remedy for abuses, has a powerful body of its own representatives standing over the corporations with authority to demand of them the service they ought to render. In North Carolina an order of a commission which compelled a railroad company to furnish an extra train to a certain locality or change its connections so as to give better accommodations was held constitutional in *Atlantic Coast Line R. Co. v. North Carolina*

Corp. Commission, 206 U. S. 1, 51 L. ed. 933, 27 Sup. Ct. Rep. 585, against the contention that the order deprived the railroad company of due process of law, or of the equal protection of the laws. The attack there was on the alleged unreasonableness and arbitrary nature of the commission's order. But in a Minnesota case recently decided, *State v. Great Northern R. Co.* 100 Minn. 445, 10 L. R.A. (N.S.) 250, 111 N. W. 289, the contention was made that the statute creating the commission attempted to give to it legislative powers which could not be constitutionally delegated. The commission undertook to restrain the railroad company from increasing its capital stock without the consent of the commission. But the court held that, while the increase of capital stock of the corporation was subject to the control of the legislature, and that a statute might be enacted providing generally for what purposes, and upon what terms and conditions and limitations, such an increase of stock might be made, it could not delegate to a commission the power to allow, or not to allow, such an increase, in its discretion. It held that the commission might be given the duty of supervising a proposed increase, and of finding the facts, and, then if these brought the case within the terms of the statute, to allow the proposed increase; otherwise to refuse it; but that, when the statute undertook to give the commission power to exercise its judgment as to the purposes and terms for which such an increase might be made, and to allow or refuse it, in its discretion, this constituted an unconstitutional attempt to delegate legislative power. There were other contentions in the

case as to legislative violations of the provisions of the Federal and state Constitutions forbidding the enactment of any law impairing the obligation of contracts. The court held that the statute was not obnoxious to these provisions, but that it was unconstitutional because it delegated legislative power. The distinction taken in the Minnesota case between giving authority to an officer to exercise his discretion or judgment on matters that are not definitely fixed and determined by statute, and the power merely to decide as to facts and apply fixed rules which are laid down by statute to the facts, is illustrated in the case of *Iowa L. Ins. Co. v. Eastern Mut. L. Ins. Co.* 64 N. J. L. 340, 45 Atl. 762. That was a case of a statute requiring the approval of the secretary of state to any reinsurance of the risks of a life insurance company. It provided that, unless two thirds in number of the holders of the policies proposed to be reinsured should assent thereto in writing, and the contract should be approved by the secretary of state, it should be invalid; but it provided that he should give his approval only after due inquiry and from satisfactory evidence that the interests of the policy holders were fully protected, and the proper consent given. The court held that the statute was not unconstitutional as attempting to delegate legislative power to the secretary of state, since it merely required him to enforce a prescribed rule upon ascertaining, by an examination of values and mathematical relations, whether a safe financial situation existed, and whether a certain document had been properly signed.

There are numerous cases in which the question of delegation of power to commissioners has been decided, and in several of them the question related to insurance or railroad commissioners. Statutes attempting to authorize insurance commissioners to prepare a standard policy of insurance and make it obligatory on the insurance companies have been held unconstitutional attempts to delegate legislative power in the following cases: *Anderson v. Manchester Fire Assur. Co.* 59 Minn. 182, 28 L.R.A. 609, 50 Am. St. Rep. 400, 60 N. W. 1095, 63 N. W. 241; *O'Neil v. American F. Ins. Co.* 166 Pa. 72, 26 L.R.A. 715, 45 Am. St. Rep. 650, 30 Atl. 943; *Dowling v. Lancashire Ins. Co.* 92 Wis. 63, 31 L.R.A. 112, 65 N. W. 738. Statutes giving railroad commissioners authority to

regulate the charges of railroads for transportation of passengers and freight have been upheld in several cases (*McWhorter v. Pensacola & A. R. Co.* 24 Fla. 417, 2 L.R.A. 504, 12 Am. St. Rep. 220, 5 So. 129; *Chicago & N. W. R. Co. v. Dey*, 1 L.R.A. 744, 2 Inters. Com. Rep. 325, 35 Fed. 806); especially when the reasonableness and legality of such regulation are reviewable by the courts (*Atlantic Exp. Co. v. Wilmington & W. R. Co.* 111 N. C. 463, 18 L.R.A. 393, 4 Inters. Com. Rep. 294, 32 Am. St. Rep. 865, 16 S. E. 393; *Chicago, B. & Q. R. Co. v. Jones*, 149 Ill. 361, 24 L.R.A. 141, 4 Inters. Com. Rep. 683, 41 Am. St. Rep. 278, 37 N. E. 247). It is not to be supposed that all the questions that may arise respecting the constitutional powers of commissions have been settled, but the above cases settle some of the more important ones at least.

There are many matters of the highest importance which the state should regulate, but which the legislature is constitutionally unfit to determine; among them are these questions which in several states are now committed to the various commissions for the regulation of public-service corporations. To expect a legislature to determine justly some of the complex questions which have to be decided in many cases in order to determine the reasonableness of rates of various public-service companies is unreasonable. Legislatures are constitutionally unfit to determine questions of that sort. A commission composed of a few men of special ability and fitness can do such work satisfactorily, it may be, but the legislature certainly cannot. This has been recognized by the legislatures of those states that have appointed commissions for such purposes. Public interest in the work of such commissions is, at the present time, very great, and any decisions as to the validity of their work are therefore of much interest.

Driving Foul Air against Neighbor's Windows as Nuisance.

One of those modern instances in which old principles are applied to a new state of facts is found in the recent case of *Vaughan v. Bridgham*, 193 Mass. 392, 9 L.R.A.(N.S.) 695, 79 N. E. 739. The suit was brought to enjoin the discharge across a passageway, and against the plaintiff

windows, by means of an electric fan, of a steam of air which was more or less heated and impure, and charged with offensive smells. The court held that the defendants had a right to maintain windows and doors and other openings into and upon the passageway for light and air, and to ventilate into it by any proper means, if by so doing they did not create a nuisance. It held, further, that to cause a current of heated or impure air, or air charged with offensive smells, to strike upon the opposite window of the plaintiffs, was a nuisance in case the plaintiffs elected, as they had a right to do, to keep their windows open. It is obvious that life might be made miserable, and the use of premises made intolerable, by a forced blast of impure and foul-smelling air, if its impurities and foul odors were sufficiently bad. In such a case, it could not be well deemed anything less than a nuisance. But it does not follow that every slight current of air, even if it were not absolutely pure, would be deemed sufficiently objectionable to constitute a nuisance. Like most other cases of nuisance, it is deemed largely a question of degree. One prior case, quite similar to this, is that of *Ponder v. Quitman Ginney*, 122 Ga. 29, 49 S. E. 746, in which it was decided that one who used in a ginning plant machinery which separated dust and sand from cotton, and blew them in large volumes into the air and into the dwelling house of an adjacent owner, was liable in damages for an invasion of the neighbor's property rights. These cases are interesting, not because of any new principle involved in them, but because, while the use of electric fans and air blasts has become common, these seem to be the first instances where legal liabilities growing out of them toward neighboring proprietors have been passed upon.

Legislative Committees after Close of Session.

The power of a legislative committee to sit after the close of the session of the legislature at which the committee was created, is a question that was recently passed upon in the West Virginia case of *Ex parte Caldwell*, 10 L.R.A. (N.S.) 172, 55 S. E. 910. In that case a committee had been appointed by the house of delegates to conduct a certain investigation, and, after the adjourn-

ment of the legislature, the committee summoned a witness to appear, and, upon his refusal, had him attached for contempt. But it was held that he was entitled to release on habeas corpus because of the total want of power in the committee after the legislature adjourned. The court said there was no doubt that both branches of the legislature could pass a joint resolution which would authorize a committee to sit after the legislature adjourned, because the passage of such resolution in a proper case would be no less a performance of a legislative function than the passage of a statute. The authorities fully support this conclusion as to a committee appointed by both branches of the legislature. They are less certain as to the doctrine in the *Caldwell* Case that one branch of the legislature could not give a committee power to sit after the legislature adjourned. The court says there are two reasons why both branches of the legislature can give such authority, while one cannot: First, both houses can pass an act to operate after adjournment, and both houses can pass a resolution to operate after adjournment, because they have the concurrent action of both branches, whereas the act or resolution of one branch has not, and the Constitution plainly contemplates that no act or ordinance having legal force after adjournment shall be passed by one branch. The other reason is, that the legislature may meet again after adjournment, whereas one house cannot, alone, meet. There is a statement in *Cooley's Constitutional Limitations*, p. 193, when speaking of the committee of one house of the legislature, that "such a committee has no authority to sit during a recess of the house which has appointed it, without its permission to that effect; but the house is at liberty to confer such authority if it see fit." But it is said in *Tipton v. Parker*, 71 Ark. 193, 74 S. W. 298, that "the 'recess' here referred to by Judge Cooley means the intermission between sittings of the same body at its regular or adjourned session, and not to the interval between the final adjournment of one body and the convening of another at the next regular session. When applied to a legislative body, it means a temporary dismissal, and not an adjournment *sine die*." While there is not much authority directly in point, so far as it goes, it seems to support the decision in the *Caldwell* Case.

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writing and waiver to be in writing; (c) policies requiring consent to be in writing, and waiver to be in writing, and forbidding waiver except by designated persons; (d) policies in which consent is required to be in writing, and in which waiver is absolutely forbidden; (e) policies requiring consent to be in writing, and waiver to be in writing, and forbidding waiver as to some provisions and permitting it as to others; (f) policies requiring consent to be in writing, and having restrictions as to power of agents, but not requiring waiver to be in writing

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Interpleader.

Interpleader sought by one who has contract with one of parties defining his rights or obligations with respect to the subject-matter:—(I.) Introduction; (II.) interpleader where the original relation is contractual: (a) in general; (b) interpleader between landlord and tenant; (c) interpleader between vendor and vendee; (d) interpleader between bank and depositor; (e) interpleader between bailor and bailee; (f) interpleader between pledgee and pledgee; (g) interpleader between principal and agent; (III.) interpleader where an independent contractual relation exists

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Negligence.

Negligence in leaving horse unhitched in highway:—(I.) Negligence; (II.) evidence of negligence; (III.) question for the jury; (IV.) ordinances and statutes; (V.) other cases; (VI.) summary

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Parent and child.

Parent's liability for torts of minor child:—(I.) Scope of note; (II.) liability at common law: (a) general rule; (b) torts committed with sanction or acquiescence of parent; (c) ratification by parent of child's tort: (1) what constitutes ratification; (2) what does not constitute ratification; (d) where relation of master and servant exists: (1) in general; (2) acts within scope of employment; (3) acts not within scope of employment; (4) presumptions; (5) when question of relation a question for jury; (e) negligence of parent: (1) permitting child to have firearms; (2) keeping firearms, etc., within reach of child; (III.) statutory liability

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Principal and agent.See **INSURANCE.****Waiver.**See **INSURANCE.**

Among the New Decisions.

Aliens. Lands containing deposits of limestone, silica, silicated rock, and clay, which are valuable for the manufacture of cement, are held, in *State ex rel. Atkinson v. Evans* (Wash.) 10 L.R.A. (N.S.) 1163, to be within the constitutional provision permitting aliens to purchase lands containing valuable deposits of minerals, metals, iron, coal, and fire clay.

Animals. The right of the owner of a dog to maintain an action against one who wantonly and maliciously kills or injures it is sustained in *Columbus Railroad Co. v. Woolfolk* (Ga.) 10 L.R.A. (N.S.) 1136.

Antenuptial contract. See **CONTRACTS**.

Appeal. Appeal, and not petition to review, is held, in *Mason v. Wolkowich* (C. C. A. 1st C.) 10 L.R.A. (N.S.) 765, to be the proper method of reviewing proceedings in a bankruptcy court which involve a controversy such as a demand by the trustee that proceeds of a sale made by a receiver be paid to him, rather than a mere proceeding in bankruptcy.

Arrest. A police officer is held, in *Klein v. Pollard* (Mich.) 10 L.R.A. (N.S.) 1008, to have no authority to arrest without warrant a woman who is walking quietly along the street after emerging from a disorderly saloon at midnight.

Automobiles. A law regulating the use of automobiles alone, of all the vehicles which use the highway, is held, in *State v. Swagerty* (Mo.) 10 L.R.A. (N.S.) 601, not to be invalid special legislation.

One stopping an automobile in front of a corner store is held, in *House v. Cramer* (Iowa) 10 L.R.A. (N.S.) 655, not to be liable for the running away of a team hitched near the corner on a side street, although he permitted the explosions to continue after the machine stopped, if, after he saw that the team was frightened, he could not have stopped the noise in time to obviate the escape of the team.

Bankruptcy. See **APPEAL**.

Banks. Money received by an insolvent banker for the purchase of a draft which he knows to be worthless is held, in *Whitcomb v. Carpenter* (Iowa) 10 L.R.A. (N.S.) 928, to be held by him in trust for its owner, who is entitled to priority over general creditors.

Money collected by an attorney for clients, and deposited in a bank in his own name as

"Atty.," is held, in *Cunningham v. Bank of Nampa* (Idaho) 10 L.R.A. (N.S.) 706, to be recoverable for the use and benefit of the parties beneficially interested, in an action brought against the bank and an officer who attached the fund to secure an individual debt of the attorney.

Bills and notes. An innocent holder for value is held, in *Arnd v. Sjolom* (Wis.) 10 L.R.A. (N.S.) 842, to be entitled to enforce a note given for lightning rods, notwithstanding it does not bear upon its face a declaration of that fact, as required by statute, which renders it invalid as between the parties to it.

Boundaries. An agreement without consideration, to fix the division line between two adjoining property owners at a place which is known by both parties not to be the true line, is held, in *Lewis v. Ogram* (Cal.) 10 L.R.A. (N.S.) 610, to be without effect.

Carriers. A common carrier of live stock, which provides stock yards at its station for the purpose of receiving stock for shipment, is held, in *St. Louis & S. F. R. Co. v. Beets* (Kan.) 10 L.R.A. (N.S.) 571, to be bound to keep the yards in a reasonably safe condition, and to be liable for injuries to stock resulting from a failure to do so.

A railway company carrying stock is held, in *Atchison, T. & S. F. R. Co. v. Allen* (Kan.) 10 L.R.A. (N.S.) 576, to be bound to keep its stock yards and their approaches and walks in a reasonably safe condition, not only for the stock placed in the yards, but also for persons who accompany the stock as care takers, and who, in the performance of their duties, may find it necessary to go into or through the yards.

A carrier which undertakes to carry perishable commodities in refrigerator cars is held, in *C. C. Taft Co. v. American Express Co.* (Iowa) 10 L.R.A. (N.S.) 614, to be bound to provide a supply of ice ample for the purpose, not merely at the point of shipment, but at such places along the route as will reasonably insure a safe transit to the point of destination, notwithstanding damp weather and the delays ordinarily incident to railway traffic.

The negligent delay of a carrier in moving goods intrusted to it for transportation, not so unreasonable as to amount to a conversion, is held, in *Rodgers v. Missouri P. R. Co.* (Kan.) 10 L.R.A. (N.S.) 658, not

to render it liable for the loss of such goods after they have been carried to their destination, if they are there destroyed by an act of God before delivery.

The mere fact that a passenger train runs into an open switch and collides with cars standing thereon is held, in *Southern R. Co. v. Lee* (Ky.) 10 L.R.A.(N.S.) 837, not to raise, in favor of an injured passenger, a presumption of gross negligence, which, without evidence, will entitle him to punitive damages.

A street railway company, in the absence of a general undertaking of liability as a common carrier of baggage, or of special contract, is held, in *Sperry v. Consolidated R. Co.* (Conn.) 10 L.R.A.(N.S.) 907, not to assume such liability because its conductor takes the suit case of a passenger who enters the car and carries and deposits it near the seat occupied by the passenger.

A railroad company is held, in *Bergstrom v. Chicago, R. I. & P. R. Co.* (Iowa) 10 L.R.A.(N.S.) 1119, to be bound by the acts of its baggage man in receiving as baggage articles not strictly such, where the owner has no notice of any limitation upon his authority.

The officers of a vessel, who have permitted a person who is unprepared for a long voyage, and will be subjected to considerable injury if compelled to take one, to come on board to visit passengers while the vessel is at a stopping place, are held, in *Pacific Coast Co. v. Jenkins* (C. C. A. 9th C.) 10 L.R.A.(N.S.) 969, to be bound, if practicable, to return to the wharf and permit him to land, notwithstanding he is negligent in failing to respond to signals to leave, and does not present himself for that purpose until the vessel has swung away from the wharf.

Cashier's check. See CHECKS.

Checks. In case a lender of money attempts to transfer it by means of a cashier's check of the bank in which it is deposited, which is payable in current funds and therefore not negotiable, which bank is at the time insolvent, so that the check is worthless, it is held, in *Dille v. White* (Iowa) 10 L.R.A.(N.S.) 510, that the loss falls on him, and not on the borrower, although the failure of the bank is not announced until the check had reached the possession of the borrower.

The transfer of a check to successive holders is held, in *Gordon v. Levine* (Mass.) 10

L.R.A.(N.S.) 1153, not to extend the time for presentment, where it is drawn and delivered in the place where the drawee is located.

Commerce. The right of a state to require a steamboat company engaged in interstate commerce to maintain an agency and place of business within its limits as a condition of being permitted to touch at ports within the state, is denied in *Ryman Steamboat Line Co. v. Com.* (Ky.) 10 L.R.A.(N.S.) 1187.

Conspiracy. A contract between a manufacturer and wholesale dealers throughout the United States, by which the former is to give the latter terms more favorable than he gives other dealers, and they are to sell his product exclusively and have the quantity of the product taken by them determined by him, and which fixes the prices to be charged retailers, is held, in *Wheeler-Stenzel Co. v. National Window Glass Jobbers' Assn.* (C. C. A. 3d C.) 10 L.R.A.(N.S.) 972, to be illegal under the Sherman anti-trust act.

A contract by a merchant, in consideration of the gift of a small quantity of the commodity which he is engaged in selling, by the agent of the manufacturer whose product he is handling, to countermand an order given a rival, and not to handle the latter's goods, is held, in *Standard Oil Co. v. State* (Tenn.) 10 L.R.A.(N.S.) 1015, to render the agent liable to punishment at common law and under a statute making illegal any contract or combination to lessen competition.

Constitutional law. One who has rendered services to the public in performance of a contract authorized by statute, the constitutional validity of which has been affirmed by the supreme court, is held, in *Thomas v. State ex rel. Gilbert* (Ohio) 10 L.R.A.(N.S.) 1112, to be entitled, notwithstanding a subsequent decision that the act is constitutionally void, to receive the stipulated compensation for such services as he has performed before the filing of the petition in the action which challenges the validity of the contract.

A statutory allowance for the wilful and reckless killing of a person, of punitive damages proportioned to the injury resulting from the death to the parties respectively for whom and for whose benefit the action is brought, is held, in *Hull v. Seaboard Air Line R. Co.* (S. C.) 10 L.R.A.(N.S.)

1213, not to be an unconstitutional interference with defendant's property rights.

See also *GAME LAWS*.

Contempt. A judgment or order committing to jail upon a charge of contempt in disobeying a decree, made in the absence of the person, is held, in *Mylius v. McDonald* (W. Va.) 10 L.R.A.(N.S.) 1098, to be void.

Contract. The acceptance of an order taken by a traveling salesman is held, in *Baird v. Pratt* (C. C. A. 8th C.) 10 L.R.A.(N.S.) 1116, not to be effected by shipping the goods and sending by mail an invoice and bill for them, the terms of the contract in which are different from those contained in the order; and the purchaser is therefore held to have the right, upon inspection of the new proposition, to withdraw his order.

A delivery and acceptance of any part of the goods which are the subject of an oral agreement, and within the statute of frauds, at any subsequent time, is held, in *Gabriel v. Kildare Elevator Co.* (Okla.) 10 L.R.A.(N.S.) 638, to take the contract out of the statute of frauds, and make the entire contract valid.

A provision in an antenuptial contract, by which, in consideration of the marriage and the release by the intended husband of all his rights in the property of the intended wife, she agrees to bestow upon him, after her death, a specified annual income so long as he shall remain unmarried, is held, in *Re Appleby* (Minn.) 10 L.R.A.(N.S.) 590, not to be void as a condition in restraint of marriage.

One who advises another in writing that he will honor the draft of a third person for a specified amount on hogs or cattle is held, in *Stough v. Healy* (Kan.) 10 L.R.A.(N.S.) 918, not to undertake to honor any draft which such third person may draw upon him, but only such as are for the price of stock shipped to him.

Since, in the absence of evidence to the contrary, the presumption is that an order for goods, taken by a commercial traveler, is subject to approval by the house which he represents, and no contract results until such order is accepted, the proposed buyer is held, in *Bauman v. McManus* (Kan.) 10 L.R.A.(N.S.) 1138, to have an unqualified right to withdraw such an order at any time before it is accepted.

See also *CONSPIRACY*.

Corporations. Taking assignments of val-

id claims against residents of a state, and bringing actions thereon, are held, in *A. Booth & Co. v. Weigand* (Utah) 10 L.R.A.(N.S.) 693, not to be doing business within the state by a corporation not engaged in the business of such transactions, or in a business connected with the claims.

The officers of a corporation who, after executing to one of their number a mortgage to secure its creditors, organize another corporation to take over the property under a mortgage foreclosure, are held, in *Sparrow v. E. Bement & Sons* (Mich.) 10 L.R.A.(N.S.) 725, to have no right, after giving minority stockholders to understand that their stock will be protected, and permitting them to participate in meetings of the new corporation, to refuse to recognize the stock.

See also *SET-OFF*.

Cotenancy. A lease to take oil and gas, executed by a widow upon lands of which she owns an undivided half, is held, in *Compton v. People's Gas Co.* (Kan.) 10 L.R.A.(N.S.) 787, not to be void as authorizing the commission of waste with respect to the interest of the owners of the other half of the property.

An allegation of tender of the share of the expense incurred is held, in *Darcey v. Bayne* (Md.) 10 L.R.A.(N.S.) 863, to be necessary in a bill to declare a tenant in common a trustee for the common benefit in respect to an adverse interest in the property which he has bought in.

Courts. The temporary presence within a state of a child with its father, whose domicile is in another state, is held, in *Lanning v. Gregory* (Tex.) 10 L.R.A.(N.S.) 690, to give the court of that state no jurisdiction of a suit by its mother, who is also a non-resident, to secure custody of it.

Covenant. Merely describing property sold as bounded by an alley is held, in *Fulmer v. Bates* (Tenn.) 10 L.R.A.(N.S.) 964, not to constitute a warranty that the alley exists, if the grantor does not own the land on which it is supposed to be located.

Criminal law. A prisoner who takes the witness stand in his own behalf is held, in *Harrold v. Territory* (Okla.) 10 L.R.A.(N.S.) 604, to waive his constitutional privilege of silence; and the prosecution is held to have the right to cross-examine him upon his evidence in chief, with the same latitude as would be exercised in the case of an ordinary witness, as to the circumstances connecting him with the crime.

A court which has sentenced a convict to death is held, in *Ex parte State ex rel. Wilson* (Ala.) 10 L.R.A.(N.S.) 1129, to have the right to stay the execution to inquire as to his sanity, and, if insane, to continue the stay until his recovery.

The trial, on a statutory or legal holiday, of one accused of crime, is held, in *State v. Duncan* (La.) 10 L.R.A.(N.S.) 791, not to be null if it takes place with the consent or acquiescence of the accused.

Damages. Failure of a manufacturer to fill the orders of a wholesaler according to contract is held, in *H. G. Holloway & Bro. v. White-Dunham Shoe Co.* (C. C. A. 7th C.) 10 L.R.A.(N.S.) 704, not to render him liable for loss of profits which the wholesaler might have made by resale of the property.

The danger to which occupants of the remaining land and the stock thereon will be exposed by the operation of railway over land taken by eminent domain proceedings is held, in *Indianapolis & C. Traction Co. v. Larrabee* (Ind.) 10 L.R.A.(N.S.) 1003, not to be considered in assessing the damages for injury to the land not taken.

See also CONSTITUTIONAL LAW.

Death. While an administrator may, in good faith, settle a claim for damages on account of the death of his intestate by the wrongful act or neglect of another, without the consent of the surviving spouse and next of kin, yet it is held, in *Aho v. Jesmore* (Minn.) 10 L.R.A.(N.S.) 998, that a release of such claim, fraudulently made by the administrator, the adverse party participating in the fraud, is no bar to an action to enforce the claim by a succeeding administrator.

Deeds. A sale or conveyance of the property is held, in *St. Peter's Church v. Bragaw* (N. C.) 10 L.R.A.(N.S.) 633, not to be an abandonment, within the meaning of a clause in a deed that the property shall revert to the grantor upon its abandonment by the grantee.

Dentists. See GOOD WILL.

Domicil. The domicil of one through whose dwelling runs the boundary line dividing two municipalities is held, in *East Montpelier v. Barre* (Vt.) 10 L.R.A.(N.S.) 874, to be the one containing the portion of the structure most closely connected with the primary purposes of a dwelling.

Dower. Remarriage of the widow is held, in *Chrisman v. Linderman* (Mo.) 10 L.R.A.(N.S.) 1205, not to destroy her dower right,

although the decedent's real estate does not exceed in value the homestead right, which is destroyed by such remarriage.

Drains and sewers. See MUNICIPAL CORPORATIONS.

Eminent domain. A charter obtained from the state for the purpose of constructing and operating a commercial railway as a common carrier is held, in *Bridwell v. Gate City Terminal Co.* (Ga.) 10 L.R.A.(N.S.) 909, to be granted for a public purpose; and the company is held to have no right to exercise the right of eminent domain for a mere private purpose.

See also DAMAGES.

The poles and wires of a local telephone company are held, in *De Kalb County Teleph. Co. v. Dutton* (Ill.) 10 L.R.A.(N.S.) 1057, to constitute an additional servitude upon a street the fee of which is in the abutting owner.

Evidence. The transferee of warehouse receipts for merchandise, which, under the statute, are negotiable to the same extent as promissory notes, is held, in *National Bank of Commerce v. Chatfield, W. & Co.* (Tenn.) 10 L.R.A.(N.S.) 801, to have the burden of showing that he obtained them bona fide, where his assignor, when insolvent, secured the goods on credit, and deposited them in the warehouse for the purpose of transferring the receipts and defrauding the vendors of their property.

Executors and administrators. Power conferred upon executors to sell testator's real estate is held, in *Trogdon v. Williams* (N. C.) 10 L.R.A.(N.S.) 867, not to include power to give an option thereon.

Fraud. One who deposits his money with a stakeholder under an arrangement with the promoters of a fake foot-race scheme, and in the belief that it is to be bet upon a "sure-thing" winner, and for the purpose of fleecing those who bet on the other "runner;" but who, in fact, is himself being duped by the promoters, who are all in a conspiracy to "skin" him out of his money, —is held, in *Falkenberg v. Allen* (Okla.) 10 L.R.A.(N.S.) 494, to be entitled, although engaged in a wrongful purpose, to recover back his money from the stakeholder in case he repents and demands the return of his money before the stakeholder parts with it.

A creditor who, to induce his debtor to secure the indebtedness by a mortgage on a stock of goods, promises that he will not

permit a sale of the property under foreclosure for less than a certain sum, is held, in *Cerny v. Paxton & G. Co.* (Neb.) 10 L.R.A. (N.S.) 640, to be guilty of actionable fraud where he makes the promise with the secret intention of not performing it, although it does not relate to existing facts.

See also **PRINCIPAL AND SURETY**.

Game laws. The rights of a meat dealer are held, in *State v. Weber* (Mo.) 10 L.R.A. (N.S.) 1155, not to be infringed by a statute forbidding the having in possession the carcasses of any deer unless the same has thereon the natural evidence of its sex, although the animals in his possession are raised in captivity.

Garnishment. See **INJUNCTION**.

Gas. The liability of a gas company in damages to the owner of trees on a boulevard in front of his premises, caused by the escape of gas from mains on streets, is held, in *Gould v. Winona Gas Co.* (Minn.) 10 L.R.A. (N.S.) 889, not to be determined by the doctrine of insurance of safety, but by principles of negligence applicable to authorized public works.

Good will. One selling the good will of a dental business is held, in *Foss v. Roby* (Mass.) 10 L.R.A. (N.S.) 1200, to have no right to establish himself in the same business in the same city, and solicit the patronage of his former patrons.

Highways. That the grade of a street established at the time of the improvement of abutting property was merely on paper is held, in *Kimball v. Salt Lake City* (Utah) 10 L.R.A. (N.S.) 483, not to entitle the city to establish and bring the street to another grade to the injury of such property.

See also **AUTOMOBILES**; **EMINENT DOMAIN**; **MUNICIPAL CORPORATIONS**.

Holidays. See **CRIMINAL LAW**.

Homicide. On the trial of one accused of murder, it is held, in *Rogers v. State* (Ga.) 10 L.R.A. (N.S.) 999, not to be competent to prove that defendant was of weak mind, when it was admitted that he was neither an idiot nor an insane person.

Mental disease, or temporary dethronement of reason, at the time of killing another, is held, in *Duthey v. State* (Wis.) 10 L.R.A. (N.S.) 1032, to prevent one from being guilty of murder, although such state is brought about by his own fault in yielding to anger or passion.

Husband and wife. A woman who has secured a divorce because of her husband's

infidelity is held, in *Keen v. Keen* (Or.) 10 L.R.A. (N.S.) 504, to be entitled to maintain an action to recover damages for the alienation of his affections, under a statute giving her the same right to sue in her own name for unjust usurpation of her rights that her husband has.

See also **CONTRACTS**; **DOWER**.

Infants. See **COURTS**.

Injunction. An injunction to enforce a provision in a mortgage that nothing but a product of the mortgagee shall be sold on the premises is denied in *Hardy v. Allegan Circuit Judge* (Mich.) 10 L.R.A. (N.S.) 474, on the ground that the remedy at law is adequate.

The mere fact that boat owners are engaged in transporting freight to and from a town located on a navigable river is held, in *Pedrick v. Raleigh & P. S. R. Co.* (N. C.) 10 L.R.A. (N.S.) 554, not to entitle them to maintain an action to enjoin the construction of a bridge between the town and the sea, which will interfere with their occupation; their injury being no different from that of the general public.

Since the prevention of fire is a matter which the state has confided to towns, it is held, in *Houlton v. Titcomb* (Me.) 10 L.R.A. (N.S.) 580, that a town may maintain a bill in equity to enjoin the violation of an ordinance forbidding the construction of wooden buildings within the fire limits.

The magnitude of the business of one polluting a water course is held, in *Parker v. American Woolen Co.* (Mass.) 10 L.R.A. (N.S.) 584, to be no excuse for the denial of an injunction to prevent such pollution.

The right to an injunction against a municipal corporation to restrain it from erecting in a public street a building to contain an electric-light plant, or to remove such building after it is erected, is sustained in *McIlhinny v. Trenton* (Mich.) 10 L.R.A. (N.S.) 623.

The right to an injunction to restrain the enforcement of an unconstitutional tax law which will constitute an interference with property rights, and may subject the property owners to a multiplicity of suits, is sustained in *Missouri, K. & T. R. Co. v. Shannon* (Tex.) 10 L.R.A. (N.S.) 681.

Shooting guns over another's land, so as to cause considerable damage, is held, in *Whittaker v. Stangvik* (Minn.) 10 L.R.A. (N.S.) 921, to be an enjoineable wrong.

The jurisdiction of equity to enjoin the

levying of repeated writs of garnishment for wages as they accrue from time to time, which the debtor defeats under the statutory exemption, is denied in *Baxley v. Laster* (Ark.) 10 L.R.A.(N.S.) 983, where the only means of claiming the exemption designated by the statute is by filing a schedule of the debtor's property, showing that it is within the amount allowed to him as exempt from execution.

Insurance. Suicide is held, in *Lange v. Royal Highlanders* (Neb.) 10 L.R.A.(N.S.) 666, not to defeat a recovery upon a contract of life insurance, not procured by the insured with the intention of committing suicide, unless the contract so provides in express terms.

Where a policy of fire insurance contains the provision that no suit or action shall be sustained thereon unless commenced within six months next after the fire, it is held, in *Appel v. Cooper Insurance Co.* (Ohio) 10 L.R.A.(N.S.) 674, that the period of limitation begins to run from the date of the fire, notwithstanding the policy also contains the provision "that the loss shall not be payable until sixty days after proofs of loss have been received by the company."

A beneficiary in a mutual benefit certificate, who, under the terms of the contract, can be changed at any time by the insured, is held, in *Davis v. Supreme Council Royal Arcanum* (Mass.) 10 L.R.A.(N.S.) 722, not to be entitled to recover on the certificate in case the insured takes his own life while sane, although there is no provision in the certificate against suicide.

A temporary increase of hazard, which ceases before loss, is held, in *Sumter Tobacco Warehouse Co. v. Phoenix Ins. Co.* (S. C.) 10 L.R.A.(N.S.) 736, not to prevent recovery on a fire-insurance policy which provides that it shall be void if the hazard is increased.

Breach of warranty of title in an insurance policy with respect to the building is held, in *Goorberg v. Western Assur. Co.* (Cal.) 10 L.R.A.(N.S.) 876, to avoid the insurance on the contents, although building and contents were insured for separate amounts for an entire premium, where the risk upon both items is the same.

For a man sixty-six years old, weighing 184 pounds and carrying an umbrella under his arm, to attempt to board a train running 6 or 8 miles an hour, is held, in *Rebman v. General Acci. Ins. Co.* (Pa.) 10 L.R.

A.(N.S.) 957, to be so obviously dangerous as to come within the clause of an accident insurance policy which states that the policy does not cover injuries from voluntary exposure to unnecessary danger.

That commercial travelers were accustomed to run hazardous risks in boarding trains at the time an accident insurance company accepted one as a member is held, in *Garcelon v. Commercial Travelers' E. Acci. Asso.* (Mass.) 10 L.R.A.(N.S.) 961, not to warrant the inference that it agreed to insure him against injury resulting from such conduct, contrary to the terms of the contract.

An insurance company's superintendent of agencies, with power to adjust and settle claims, is held, in *Industrial Mutual Indemnity Co. v. Thompson* (Ark.) 10 L.R.A.(N.S.) 1064, to have authority to waive a forfeiture for nonpayment of premiums, although the policy provides that waivers can be effected only "in writing signed by the president, vice president, or secretary."

A mortgagee for whose benefit insurance is effected upon buildings upon the mortgaged property by the mortgagor is held, in *Thorpe v. Croto* (Vt.) 10 L.R.A.(N.S.) 1166, to be bound, upon collecting a loss under the policy, to hold the fund and apply it upon the indebtedness as it falls due, unless the mortgagor consents to a different application.

See also **TAXES; TRUSTS.**

Interpleader. The right to maintain a bill in the nature of a bill of interpleader is held, in *Stephenson v. Burdette* (W. Va.) 10 L.R.A.(N.S.) 748, not to exist in favor of one who has contracted or incurred a personal obligation or liability to one or both of the defendants respecting the subject-matter of their contention, independent of the title or the right to possession.

Laches. That the courts will not interfere with an unconstitutional apportionment of the state into districts for the election of legislators which is not questioned for thirteen years, and the annulment of which would throw the government into chaos, is held in *Adams v. Bosworth* (Ky.) 10 L.R.A.(N.S.) 1184.

Landlord and tenant. The lessee of a room in a building is held, in *Whipple v. Gorsuch* (Ark.) 10 L.R.A.(N.S.) 1133, not to be entitled to remove a "For rent" sign placed on the outside of the window after he has given notice of intention to quit, but

before the expiration of the term for which he has paid rent.

Larceny. Selling to a stranger property which one has already sold to another is held, in *Henderson v. State* (Ark.) 10 L.R.A. (N.S.) 816, not to be sufficient to justify a conviction of larceny, although the property is taken away by the second purchaser.

Levy and seizure. An execution sued out by an administrator upon a judgment of foreclosure in favor of his intestate, to whom possession had been surrendered prior to his death but regained thereafter, although irregular and the use of it misuse of process, is held, in *Finch v. Burr* (Conn.) 10 L.R.A. (N.S.) 1049, not to be void if the death is not suggested upon the record, or in fact known to the clerk of the court.

Libel and slander. In an action for slander by the utterance of words imputing a crime, where a plea of justification is interposed, the party justifying is held, in *Abraham v. Baldwin* (Fla.) 10 L.R.A. (N.S.) 1051, to be bound to produce evidence of the acts and intent which are material elements of the crime imputed sufficiently preponderant to overcome in the minds of the jury the legal presumption of innocence as well as the opposing testimony.

Limitation of actions. The statute of limitations is held, in *Barnes v. Turner* (Okla.) 10 L.R.A. (N.S.) 478, not to run in favor of a municipal, or quasi municipal, corporation, upon its outstanding obligations evidenced by warrants, until the corporation has provided a fund out of which payment of the same may be made.

A statutory provision that, in case of absence from the state, the statute of limitations shall not begin to run until return, is held, in *Ramsden v. Knowles* (C. C. A. 1st C.) 10 L.R.A. (N.S.) 897, not to operate to preserve a right of action against the debtor in another state, where he may be found.

See also NUISANCE.

Master and servant. An employer whose servant, with an officer, goes to get from a customer furniture which is security for a loan overdue, is held, in *Hardeman v. Williams* (Ala.) 10 L.R.A. (N.S.) 653, not to be liable for the servant's act in assisting the officer in an assault upon the mistress of the house, which results from the officer's losing his temper and making an attack upon her when she addressed to him a contemptuous remark during a friendly conversation be-

tween the parties as to the state of the indebtedness.

The liability of a master for an injury sustained by a servant while attempting to clean machinery which was in motion, in accordance with an order given by another servant who was authorized by the master to give general directions, is sustained in *Moore v. Dublin Cotton Mills* (Ga.) 10 L.R.A. (N.S.) 772, where the injured servant was free from negligence, and the accident was due to a latent danger of which the master knew, or ought to have known.

A railroad company is held, in *New York, C. & St. L. R. Co. v. Hamlin* (Ind.) 10 L.R.A. (N.S.) 881, to owe to employees whose duties will bring them in contact with it the duty of exercising reasonable care to inspect a foreign car received for transportation over its road, either to repair defects or to notify employees thereof.

The rule justifying a servant to continue his employment upon promise of the master to remedy an unsafe condition of which he complained is held, in *Williams v. Kimberly & Clark Co.* (Wis.) 10 L.R.A. (N.S.) 1043, to apply to the removal of an incompetent fellow servant, as well as to the repairing of dangerous machinery.

A street car company is held, in *Carter v. McDermott* (D. C.) 10 L.R.A. (N.S.) 1103, not to discharge its duty to motormen by placing rear lights at places whence they are to be taken and attached to cars by conductors, but to be liable for an injury to a motorman due to the failure of a conductor properly to equip his car with a light.

Upon trial of an expressman for breach of a statute requiring the recording in a book kept for that purpose of liquors received for transportation, where it appears that failure to make the proper entries was the act of a servant, the mere fact that the keeping of the book was within the servant's authority is held, in *Com. v. Riley* (Mass.) 10 L.R.A. (N.S.) 1122, not to be decisive of the master's liability.

An electric railway company is held, in *Savannah Electric Co. v. Wheeler* (Ga.) 10 L.R.A. (N.S.) 1176, to be liable in damages for the act of its drunken conductor, who, when asked by a passenger for correct change, shot at him, with the result that the bullet missed the passenger and killed a woman passing in the public street.

A leasor railroad company, although without charter or statutory permission to lease

its road, is held, in *Travis v. Kansas City, S. & G. R. Co.* (La.) 10 L.R.A.(N.S.) 1189, not to be liable for the death of an employee, due to the negligent failure of the lessee company to light the railroad yards.

Mines. A lessee of the owner of coal in place with right to mine, the ownership of which has been separated from the surface, is held, in *Campbell v. Louisville Coal Min. Co.* (Colo.) 10 L.R.A.(N.S.) 822, to take the lease under the implied covenant to conduct his mining operations so as not to damage the surface.

See also **ALIENS; COTENANCY.**

Mob. See **MUNICIPAL CORPORATIONS.**

Mortgages. A mortgagee who pays taxes on the land to protect his mortgage interest is held, in *Stone v. Tilley* (Tex.) 10 L.R.A.(N.S.) 678, to be bound to enforce his claim therefor at the time of foreclosure, and to have no right subsequently to maintain an action for reimbursement against the owners of the equity of redemption, who were not liable for the mortgage debt.

See also **INSURANCE.**

Municipal corporations. A municipal corporation is held, in *Meyers v. Philadelphia* (Pa.) 10 L.R.A.(N.S.) 678, not to be able to escape liability for injuries caused by refuse left piled in the street upon the completion of the work of resetting a curb, on the theory that the work, being done by the abutting owner at its direction, was by an independent contractor, for whose acts it was not responsible.

A municipal corporation is held, in *Johnson v. Somerville* (Mass.) 10 L.R.A.(N.S.) 715, not to be liable for the injury to adjoining property caused by the act of one employed and paid by it to collect ashes from the dwellings within its limits, in dumping them into a water course so as to fill it up and cause the water to flow onto such adjoining property, on the ground that he is not the servant of the municipality, but is selected to perform a public service.

A city which permits property owners to lay a drain in a public street so that it will empty into a natural stream is held, in *Mansfield v. Bristol* (Ohio) 10 L.R.A.(N.S.) 806, to be liable for negligence in not abating a nuisance resulting from the discharge of sewage through the drain into the stream, to the injury of a lower riparian owner, although such use of the drain is without express license from the city.

A mob or riot, within the meaning of a

statute making the municipality liable for injury to property caused thereby, is held, in *Adamson v. New York* (N. Y.) 10 L.R.A.(N.S.) 925, not to exist where a few boys and young men, on election day, when others are gathering materials for election bonfires, partially demolish an unoccupied, dilapidated house, but run away upon the approach of a policeman.

A municipal corporation, having plenary powers over its streets, is held, in *Indiana R. Co. v. Calvert* (Ind.) 10 L.R.A.(N.S.) 780, to have the right to authorize the moving of a house along them, and to require an electric railway company whose wires will be interfered with thereby to move them to permit the house to pass.

A municipal corporation is held, in *Millett v. Princeton* (Ind.) 10 L.R.A.(N.S.) 785, not to be liable for failure to prevent the riding of bicycles on sidewalks contrary to law.

Illy constructed drains and sewers, which are not sufficient to carry off the surface water which has been gathered by the gutters of the municipality, so that the water flows onto adjoining property to its injury, are held, in *Mayrant v. Columbia* (S. C.) 10 L.R.A.(N.S.) 1094, to be within the meaning of a statute giving a right of action to any person who shall receive injury to property through a defect in a street, or by reason of mismanagement of anything under control of a municipality.

See also **INJUNCTION.**

Negligence. A manufacturer who knowingly makes and puts upon the market, without notice, a highly dangerous article which does not contain intrinsic evidence of its character, is held, in *Clement v. Crosby & Co.* (Mich.) 10 L.R.A.(N.S.) 588, to be liable to one injured while attempting to use it, notwithstanding it was purchased of a merchant who knew its dangerous nature, and sold it without warning.

A workman sent by his master to repair a chimney on another's property, who, after being informed that a ladder formed of iron rungs fastened into the bricks runs up inside of it, attempts to make use of the ladder, testing the rungs as he ascends, is held, in *Hotchkin v. Erdrich* (Pa.) 10 L.R.A.(N.S.) 506, to assume the risk of its safety.

Nuisance. That one causing injury to another's property by a nuisance has not the power of eminent domain, is held, in *Virginia Hot Springs Co. v. McCray* (Va.) 10 L.R.A.(N.S.) 465, not to prevent the operation in

his favor of the statute of limitations so as to deprive the injured party of the right to damages for continuance of the nuisance.

Keeping a common pool room is held, in *Ehrlick v. Commonwealth* (Ky.) 10 L.R.A. (N.S.) 995, to be a nuisance *per se* at common law.

The habitual sale of pools on horse races at a track where many persons are assembled to witness the races is held, in *State v. Ayers* (Or.) 10 L.R.A. (N.S.) 992, to be an act which grossly disturbs the public peace, and openly outrages public decency, within the meaning of a statute providing for the punishment of such acts.

Parent and child. One who places his minor child in charge of a horse, and sends him upon the public highway to perform an errand, is held, in *Broadstreet v. Hall* (Ind.) 10 L.R.A. (N.S.) 933, to be liable for injuries to a traveler upon the highway, caused by the child's negligence in managing the horse.

Parties. One who deposits money with an express company for delivery to a designated consignee is held, in *Pratt v. Northern Pacific Exp. Co.* (Idaho) 10 L.R.A. (N.S.) 499, thereby to vest the right of possession in the latter; and, in the absence of any different or contrary instructions, the consignee is held to be entitled to demand, sue for, and receive the money.

A school district is held, in *Independent School Dist. v. Le Mars City Water & L. Co.* (Iowa) 10 L.R.A. (N.S.) 859, to have a right to maintain an action to enforce a contract made by the municipality with a water company for the furnishing of a water supply to it.

Party wall. The right to open windows in a party wall is denied in *Coggins v. Carey* (Md.) 10 L.R.A. (N.S.) 1191.

Perpetuities. The limitation of a devise to take effect from and after the probate of a will is held, in *Johnson v. Preston* (Ill.) 10 L.R.A. (N.S.) 564, to be void under the rule against perpetuities, since such probate may be postponed beyond the time allowed by that rule.

A valid limitation of a remainder is held, in *Gray v. Whittemore* (Mass.) 10 L.R.A. (N.S.) 1143, not to be defeated by the fact that another limitation under a certain contingency, to the same person designated in the valid one, is void for remoteness, if the two events are wholly separate and distinct.

Principal and agent. Merely intrusting to

an agent a horse for sale is held, in *Kearns v. Nickse* (Conn.) 10 L.R.A. (N.S.) 1118, not to clothe him with apparent authority to trade it for another horse and money.

An agent in charge of a branch office of a lottery company, who induces another, who is ignorant of the fact that the business of the company is that of a lottery, to purchase certificates containing a contract fraudulent upon its face, by false representations that the business conducted by the company is legitimate and profitable, is held, in *Fidelity Funding Co. v. Vaughn* (Okla.) 10 L.R.A. (N.S.) 1123, to be liable equally with the principal.

Principal and surety. Permitting one member of a firm of building contractors to assign his interest in the contract to his co-partner, and releasing him from liability on the contract, without consent of the sureties on the contractor's bond, is held, in *Friendly v. National Surety Co.* (Wash.) 10 L.R.A. (N.S.) 1160, to release the sureties from liability.

Proximate cause. The proximate cause of damages resulting from the obstruction of a navigable river is held, in *Pharr v. Morgan's Louisiana & T. R. & S. S. Co.* (La.) 10 L.R.A. (N.S.) 710, to be the negligent breaking of a railroad drawbridge spanning the channel by running a freight train thereon when the draw was closed, and not the work of reparation, where the usual navigable channel was closed to steamboats by the half of the span which remained stationary, and the other channel was obstructed by piling driven for the purpose of repairing the structure and facilitating railroad traffic.

A defect in a bridge is held, in *Cooper v. Richland County* (S. C.) 10 L.R.A. (N.S.) 799, to be the proximate cause of injury to the owner of a horse through its falling upon him while he is attempting to free its foot, which has become fast in the defect.

One injured by being knocked down by a horse which he is attempting to assist after it has fallen because of a defect in a highway is denied, in *Crowley v. West End* (Ala.) 10 L.R.A. (N.S.) 801, the right to recover from the municipality, on the ground that the injury was not the proximate result of the defect.

Railroads. One walking through a railroad yard where trains are likely to be moving at any time is held, in *Teakle v. San Pedro, L. A. & S. L. R. Co.* (Utah) 10 L.R.A. (N.S.) 486, to be negligent, as matter

of law, in stepping upon a track in front of a moving train without observation, which will bar all right to recover for injury from a collision with the moving train, although those operating it are also negligent in failing to maintain a lookout.

Although a water course flowing through a tract of land has been changed to an artificial channel at the time a railroad constructs its roadbed through such tract, the company is held, in *Cook v. Seaboard Air Line R. Co.* (Va.) 10 L.R.A. (N.S.) 966, to be bound to provide for the flow of the water through the channel, and through waste ways for freshets, the same as though the channel were a natural one, if it has existed for a number of years, and is to all appearances permanent.

A railroad company which permits a logging road to use its tracks with engines and cars is held, in *St. Louis, I. M. & S. R. Co. v. Chappel!* (Ark.) 10 L.R.A. (N.S.) 1175, to be liable for the destruction of neighboring property by sparks thrown by such engines.

See also *CARRIERS; MASTER AND SERVANT; RELEASE.*

Release. A release by a property owner to a railroad company which is constructing its road in the abutting street, of all damages, whether past, present, or future, for the construction and operation of the tracks along the street, is held, in *Yazoo & M. V. R. Co. v. Smith* (Miss.) 10 L.R.A. (N.S.) 1202, not to release damages for injuries caused by the subsequent elevation of the street grade.

Robbery. Compelling one to pay a sum of money which the assailant claims the other owes him, which claim is disputed by the latter, is held, in *Fanin v. State* (Tex. Crim. App.) 10 L.R.A. (N.S.) 744, to be robbery.

Sale. Receipt and retention of property are held, in *Victor Chemical Works v. Hill Clutch Co.* (C. C. A. 7th C.) 10 L.R.A. (N.S.) 814, to be sufficient to bar a claim for damages for delay in delivery, without any acknowledgment that the delivery was sufficient, under a provision of a contract that acceptance of it shall constitute such a bar.

Set-off. An adjudication in favor of a counterclaim for inferior quality and defective installation of machinery for which a series of notes was given, in a suit upon one of the notes, is held, in *Case Manufacturing Co. v. Moore* (N. C.) 10 L.R.A. (N.S.)

734, to prevent its use in defense of actions upon the other notes.

After the appointment of a receiver in a suit to enforce the liability of stockholders in an insolvent corporation, it is held, in *Hynes v. Illinois Trust & Sav. Bank* (Ill.) 10 L.R.A. (N.S.) 472, that negotiable bonds of the corporation cannot be transferred by an indebted stockholder to an assignee with notice, so as to prevent their being set off upon the judgment against the stockholder.

Street railways. One who leaves a horse unhitched and unattended in a street in which cars using snow scrapers calculated to frighten horses are running is held, in *Moulton v. Lewiston, B. & B. Street R. Co.* (Me.) 10 L.R.A. (N.S.) 845, to have no right to hold the street car company liable for injury to the horse and vehicle due to the horse's becoming frightened at a car and dashing in front of it.

See also *CARRIERS; MASTER AND SERVANT.*

Taxes. The imposition of the same tax upon the transfer of each share of corporate stock, without regard to its value, is held, in *People ex rel. Farrington v. Mensching* (N. Y.) 10 L.R.A. (N.S.) 625, to be invalid, on the ground that the classification is purely arbitrary.

The right of the legislature to apply to tax sales already made a law changing the time for redemption from a certain number of days after notice by the purchaser of intention to apply for a deed to a fixed period is denied in *Johnson v. Taylor* (Cal.) 10 L.R.A. (N.S.) 818.

In case a nonresident establishes in a state a business in charge of an agent, money accumulated from the business in the bank, and unpaid claims against customers at the time of making local assessments, are held, in *Commonwealth v. Dun* (Ky.) 10 L.R.A. (N.S.) 920, to be liable to taxation within such state, although the custom is to forward surplus accumulations to the principal monthly.

A tax against a state bank which is entitled to have deducted from the assessment of its capital so much thereof as is invested in United States bonds is held, in *Citizens' Nat. Bank v. Burton* (Ky.) 10 L.R.A. (N.S.) 947, to discriminate against a national bank shareholder who is assessed upon the value of his share in the national bank's capital, from which no such deduction is allowed.

The right of the state to insist that a decedent's estate shall be settled according to

law, and not prior to the time allowed for presentation of claims, for the purpose of perfecting an inheritance tax law to be applied thereto, is sustained in *Montgomery v. Gilbertson* (Iowa) 10 L.R.A. (N.S.) 986.

The transfer tax upon stock of a nonresident in a railroad formed by consolidation of a local road and one in another state, which in the consolidated form is chartered in both states, is held, in *Re Cooley* (N. Y.) 10 L.R.A. (N.S.) 1010, not to be properly based on the entire value of the stock, under a statute providing for such tax where the transfer is of property within the state and the decedent is a nonresident, but only on the proportional value which represents the proportion of the property belonging to the domestic corporation.

That no taxable credit, within the meaning of a tax law, can arise out of an option contract to purchase real estate, is held in *Re Shields* (Iowa) 10 L.R.A. (N.S.) 1061.

A policy of insurance issued by a local corporation upon the life of a nonresident is held, in *Re Gordon* (N. Y.) 10 L.R.A. (N.S.) 1089, not to be subject to a transfer tax, under a statute imposing such tax in case of a transfer, by will or the intestate law, of property within the state by a decedent who is a nonresident at the time of his death, where the policy has been kept, and may be collected, at the domicile of the insured.

See also *INJUNCTION*.

Telegraphs. A telegraph company is held, in *Klopf v. Western U. Teleg. Co.* (Tex.) 10 L.R.A. (N.S.) 498, not to perform its obligation merely by attempting to deliver a telegram in the suburb of a city to which it is directed, where its office is in the city, and the true address, which is within its delivery limits, could be ascertained by the exercise of reasonable diligence.

See also *EMINENT DOMAIN*.

Trees. See *GAS*.

Trusts. Ignorance of the beneficiary of a trust by one who transferred certificates of insurance on his life to another on condition that she share the proceeds with the beneficiary, until after the transfer was made, is held, in *Clark v. Callahan* (Md.) 10 L.R.A. (N.S.) 616, not to defeat the trust if the donee had knowledge of it at the time the transfer was made,—especially where the one creating the trust retained possession of the certificates to the time of his death,

during which time the donee undertook to carry out the provisions of the trust.

Usury. If, in the computation of interest upon a contract, the same is made upon a mistaken theory that days of grace would be allowed the maker in which to discharge his obligation, there being no intent to charge usurious interest, it is held, in *Sullins v. Farmers' Exchange Bank* (Okla.) 10 L.R.A. (N.S.) 839, that the mistake does not taint the entire transaction as usurious.

A woman who takes a conveyance of real estate from her spendthrift husband, to put it out of his power to fritter it away, is held in *First Nat. Bank v. Drew* (Ill.) 10 L.R.A. (N.S.) 857, not to be estopped from setting up usury in a debt secured by a mortgage which he had executed thereon.

Veterans. A statute giving preference to veteran soldiers in making appointments to minor offices is held, in *Shaw v. Marshalltown* (Iowa) 10 L.R.A. (N.S.) 825, not to be invalid as depriving other citizens of equal privileges and immunities.

Waters. See *INJUNCTION*; *RAILROADS*.

Wills. A will executed by one under such an extraordinary belief in spiritualism that he follows blindly and implicitly supposed directions of spirits in constructing the will is held, in *O'Dell v. Goff* (Mich.) 10 L.R.A. (N.S.) 989, not to be admissible to probate.

Witnesses. See *CRIMINAL LAW*.

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The Humorous Side.

BUT SEVERAL.—The London Tribune says that a West England paper recently pub-

lished the following report of the career of a mad dog:

"The infuriated animal was soon tearing up High street at full speed, and we regret to state that it severely bit the Mayor's son and several other dogs which happened to be in the vicinity."

HOW THE COMMON LAW DEVELOPS.—A Missouri newspaper, in publishing the notice of certain proceedings before a joint court of justices of the peace, approves the combination of the justices, and illustrates the advantages of such joint action by an incident which, it relates, concerned two justices of a neighboring locality to whom a man came wanting a divorce. It says the court was organized and a replevin warrant issued for the wife, under which the constable brought her into court, and she was ordered to live with her husband. The result was a happy termination of the family differences.

A MODERN FINANCIER.—During the recent financial flurry, a German farmer went to the bank for some money. He was told that the bank was not paying out money, but was using cashier's checks. He could not understand this, and insisted on money. The officers took him in hand, one at a time, with little effect. Finally the president tried his hand, and after a long and minute explanation some intelligence of the situation seemed to be dawning on the farmer's mind. Finally, the president said: "You understand now fully how it is, Hans, don't you?" "Yes," said Hans, "I tink I do. It's like dis, aindt is? Ven by baby vakes up at night and vants some milk, I gif him a milk ticket."

Naturalization in the United States

BY **FREDERICK VAN DYNE, L. L. M.**
American Consul, formerly Assistant Solicitor in the
Department of State of the United States; Author
of "Citizenship of the United States" etc.

LY enactments in 1906 and 1907, Congress reformed the Laws relating to Naturalization which have been in effect practically without change for a century. Laws which were adequate for a population of four millions when it was the policy of the government to invite immigration, were ill adapted for a population of eighty millions and an annual influx of foreigners of over one million.

The entire law and practice, as established by present statutes, by decisions of the courts and by departmental rulings is fully set forth and explained by the present work of Mr. Van Dyne. It is a book for every court and lawyer having anything to do with these matters, as well as every student of sociology, and every person interested in those vitally important problems growing out of an immense foreign population from which our new citizens come.

THE CHAPTER HEADINGS FOLLOW

1. Naturalization in pursuance of the statutes of the United States by taking out formal papers.
2. Naturalization by naturalization of parent.
3. Naturalization by marriage.
4. Collective Naturalization.
5. Expatriation.
6. Passports.
7. Attitude of Foreign Governments Toward Their Citizens Who Have Become Naturalized in the United States.

APPENDIX

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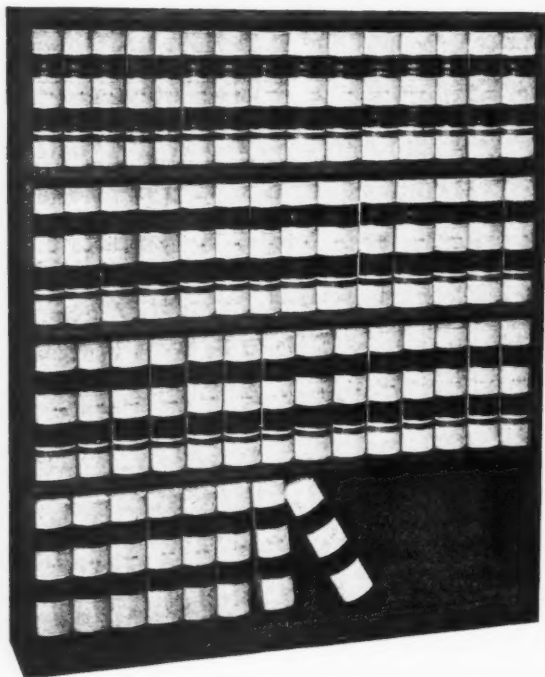
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| <p>Act regulating speed of automobiles on public highways as class legislation, see "Constitutional Law," § 77, 1905B.</p> <p>Acts and ordinances regulating speed of automobiles in public roads or highways as deprivation of property without due process of law, see "Constitutional Law," § 106, 1905B.</p> <p>Care required in operating automobile on highway, see "Highways," §§ 45, 46, 1902B; § 46, 1903B; §§ 60, 63, 64, 1904A; §§ 172-177, 1907A.</p> <p>Care required on city streets, see "Municipal Corporations," § 289, 1906B.</p> <p>Contributory negligence of driver of automobile killed by defect in street, see "Municipal Corporations," §§ 282-285, 1905A.</p> <p>Excessive speed on highway, see "Highways," § 177, 1907A.</p> <p>Injuries to persons in street, see "Municipal Corporations," § 235, 1906A.</p> <p>Liability for injuries, see "Highways," § 52, 1905B.</p> <p>Liability of municipal corporation for injury to person operating automobile, caused by defect in street, see "Municipal Corporations," § 261, 1905A.</p> <p>Lien of garage keeper for storage, see "Warehousesmen," § 7, 1905B.</p> | <p>License tax, see "Licenses," § 5, 1903A; § 1, 1905B.</p> <p>Maintenance of garage as nuisance, see "Nuisance," § 5, 1906B.</p> <p>Municipal regulations, see "Municipal Corporations," §§ 243, 251, 1905A.</p> <p>Municipal regulations as to speed, see "Municipal Corporations," § 288, 1906B.</p> <p>Registration and licensing, see "Licenses," § 6, 1905B.</p> <p>Registration and numbering as unreasonable search, see "Searches and Seizures," § 4, 1905B.</p> <p>Regulation of use of automobiles as class legislation, see "Constitutional Law," § 68, 1904A; § 77, 1905B.</p> <p>Regulation of use of automobiles in city streets, see "Municipal Corporations," § 234, 1905B.</p> <p>Right to use highway, see "Highways," § 49, 1900B; §§ 43-45, 49-51, 1906A; §§ 52, 54, 58, 1906B.</p> <p>Speed in city streets, see "Municipal Corporations," § 289, 1904A.</p> <p>Sufficiency of title of act relating to speed of automobiles on public streets, roads and highways, see "Statutes," § 39, 1905B.</p> |
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